

Application No.: 09/866,311

Docket No.: 06007/37458

REMARKS

Claims 1-7, 10, and 13-18 were examined in the most recent office action. All claims stand rejected under 35 U.S.C. § 103(a) over A'Hearn, U.S. Patent No. 6,357,320 ("A'Hearn") in view of various secondary references. Applicants previously filed a declaration swearing behind A'Hearn, but the office action found the declaration ineffective. Applicants respectfully traverse the finding that the declaration is ineffective.

The office action asserts that the declaration, filed February 3, 2005, does not support all the claim limitations and is therefore ineffective to overcome A'Hearn. The office action cites MPEP § 715.07 (I) for the proposition that the declaration must support limitations that are missing from the exhibits. The claim limitation at issue, exemplified by the following language in claim 1, recites the ride improvement means further arranged to permit lowering of the loader arm assembly when the first control valve is in the second position and the second control valve is in the first position. The office action asserts that neither the exhibits nor the declaration provide support for this limitation.

The declaration, however, fully supports the claim limitation, alleged to lack support in the exhibits. On page 3, paragraph 10, the inventors declare that they invented a hydraulic circuit for a loader arm with "a ride improvement system that remains operable while the loader arm is raised or lowered" (emphasis added). This statement directly supports the first part of the claim limitation, "the ride improvement means further arranged to permit lowering of the loader arm assembly." Further, the specification on pages 6-7 and Fig. 6 describe that when the loader arm is lowered with the ride improvement system still operable, valve 33 is closed and valve 32 is open. These valves correspond to the control valves of claim 1. Both the specification and claims describe the recited valve positions of claim 1 when the loader arm is lowered with the ride improvement system engaged. By declaring their earlier invention of a ride improvement system operable while the loader arm is lowered, the inventors inherently declared earlier invention of the recited valve positions. "The examiner must consider all of the evidence presented in its entirety." MPEP § 715.07 (I).

The office action makes no analysis of the declaration for support of the claim limitation allegedly missing in the exhibits. Instead, the office action notes that Exhibit B states, "When

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lever in cab is positioned to lower, switch D senses position (i.e., lower) de-activating SRS system." The office action asserts that de-activating the SRS system would cause both the first and second valves to be closed while lowering, thereby failing to support the noted claim language. Even if the office action is correct in its interpretation of Exhibit B, the declaration provides the necessary support as outlined above.

Furthermore, the configuration of Exhibit B as interpreted by the office action does not conflict with the claim language. This configuration can be seen in Fig. 3 of the application and merely describes a second way to lower the loader arm without the ride improvement system engaged. The ride improvement system discussed in Exhibit B and shown in Exhibit E can still operate as noted in the claims and described in the specification.

The claimed structural elements are shown in Exhibit E. The only limitation alleged to be not explicitly shown in the Exhibits is a particular use of that structure. The declaration supports the limitation, however, by affirmatively declaring that the ride improvement system shown in Exhibit E was operable while the loader arm is lowered. As outlined in the specification, the system in this configuration includes valve 33 closed and valve 32 open.

In view of the above arguments, the declaration successfully antedates A'Hearn, and the pending application is in condition for allowance.

Dated: July 19, 2005

Respectfully submitted,

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